

PERSONNEL

MERIT SYSTEM BOARD

Veterans and Disabled Veterans Preference

Proposed Amendment: N.J.A.C. 4A:5-1.1

Authorized By: Merit System Board, Rolando Torres, Jr., Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d) and P.L.2005, c.64.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-429.

A public hearing concerning the proposed amendment will be held on:

Thursday, December 15, 2005, at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal in the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by January 20, 2006 to:

Henry Maurer, Director
Merit System Practices and Labor Relations
Department of Personnel
P.O. Box 312
Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

P.L.2005, c. 64, effective April 7, 2005, amended N.J.S.A. 11A:5-1 to provide veterans preference eligibility for certain people who served in Operation Northern Watch and Operation Southern Watch for purposes of the merit system hiring preference. According to the legislation's Statement, "Operation Northern Watch and Operation Southern Watch" is the name given to the mission monitoring and controlling airspace above and below the 33rd parallel in Iraq, the so-called "no-fly zones."

Therefore, the Merit System Board proposes an amendment to N.J.A.C. 4A:5-1.1, Veterans preference, to include a new paragraph (b)7 that would identify service in Operation Northern Watch and Operation Southern Watch as qualifying an individual for veterans preference for merit system appointment purposes, so long as certain criteria are met. Pursuant to law, the criteria include a minimum of 14 days of service continuously or in the aggregate on or after August 27, 1992, but commencing on or before the date of inception of that operation, as proclaimed by the U.S. President, the U.S. Congress, or the U.S. Secretary of Defense, using whichever date of inception is earliest.

In light of the addition of the proposed new paragraph (b)7, the current paragraphs (b)7 through 14 would be recodified as (b)8 through 15.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Merit System Board anticipates a positive social impact to result from the proposed amendment regarding veterans preference. The amendment would ensure that merit system test applicants are aware that, if they meet the requirements regarding service in support of Operation Northern Watch and Operation Southern Watch, and they file a timely request, they will be eligible for veterans preference for merit system appointment purposes.

It is noted that the Department of Personnel no longer makes veterans preference

determinations, as that is the responsibility of the Adjutant General of the Department of Military and Veterans Affairs (see N.J.A.C. 4A:5-1.3). However, the Department of Personnel still must abide by the Adjutant General's determinations. Updating N.J.A.C. 4A:5-1.1 would ensure that the Department of Personnel and the Adjutant General are working with the same veterans preference eligibility information.

Economic Impact

It is anticipated that the proposed amendment would result in a positive economic impact for certain veterans. Merit system test applicants who meet the eligibility criteria for veterans preference as established in the proposed amendment would benefit economically by benefiting from the absolute veterans appointment preference in open competitive situations and the more limited veterans preference in promotional certifications. See N.J.A.C. 4A:5-2.1, Open competitive examinations, and 4A:5-2.2, Promotional examinations.

Federal Standards Statement

A Federal standards analysis is not necessary for the proposed amendment to N.J.A.C. 4A:5-1.1. The proposed amendment concerns veterans preference for appointment in the merit system and is governed solely by State law.

Jobs Impact

It is not anticipated that the proposed amendment would have any jobs impact. No jobs

would be created or lost due to the proposed amendment.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment concerns veterans preference for appointment in the merit system and does not affect New Jersey's agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment would regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the proposed amendment would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

4A:5-1.1 Veterans preference

(a) The Adjutant General of the Department of Military and Veterans' Affairs is empowered by statute to make veterans preference eligibility determinations. See P.L. 2000, c.127. The provisions of this section are for informational purposes only.

(b) A person is entitled to veterans preference (abbreviated as "V") if he or she has been discharged or released from active United States military or naval service under conditions other than dishonorable; and:

1. Served at least 90 days in the active United States military or naval service and had been discharged under conditions other than dishonorable, during:

i. World War I, between April 6, 1917 and November 11, 1918;

ii. World War II, on or after September 16, 1940 and on or before December 31, 1946;

iii. Korean Conflict, on or after June 23, 1950 and on or before January 31, 1955; or

iv. Vietnam Conflict, on or after December 31, 1960 and on or before May 7, 1975;

v. The 90 day period must have begun on or before one of the ending dates above, and shall not include any period of education or training under the Army Specialized Training Program or the Navy College Training Program which was a continuation of a civilian course, nor any time spent as a cadet or midshipman at one of the service academies. During the period of the Vietnam conflict, the following are excluded: any service performed pursuant to the provisions of section 511(d) of Title 10, United States Code; or any service performed pursuant to enlistment in the National Guard or the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve or Coast Guard Reserve.

2. Served in the Lebanon crisis on or after July 1, 1958, in Lebanon or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days commencing on or before November 1, 1958 or the date of termination of that conflict, as proclaimed by the President of the United States or Congress, whichever date of termination is the latest;

3. Served in the Lebanon peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation, for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after September 26, 1982 and on or before December 1, 1987;

4. Served in the Grenada peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate,

of at least 14 days. The 14 days must have commenced on or after October 23, 1983 and on or before November 21, 1983;

5. Served in the Panama peacekeeping mission or on board any ship actively engaged in patrolling the territorial waters of that nation for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after December 20, 1989 and on or before January 31, 1990;

6. Served in the Arabian peninsula or on board any ship actively engaged in patrolling the Persian Gulf for the Operation Desert Shield/Desert Storm mission for a period, continuous or in the aggregate, of at least 14 days. The 14 days must have commenced on or after August 2, 1990;

7. Served in the Arabian peninsula and the Persian Gulf, and in direct support of Operation Northern Watch and Operation Southern Watch, for a period, continuously or in the aggregate, of at least 14 days, on or after August 27, 1992, but commencing on or before the date of inception of that operation, as proclaimed by the President of the United States, Congress or United States Secretary of Defense, whichever date of inception is earliest;

[7.] 8. Served in Somalia or on board any ship actively engaged in patrolling the territorial waters of that nation for the Operation Restore Hope mission for a period, continuously or in the aggregate, of at least 14 days. The 14 days must have commenced

on or after December 5, 1992, or on or after the date of inception of that operation as proclaimed by the President of the United States or the Congress, whichever date is earliest, and on or before March 31, 1994, or the date of termination as proclaimed by the President of the United States or the Congress, whichever date is latest;

[8.] 9. Served in Operation Uphold Democracy in Haiti for a period of at least 14 days, continuously or in the aggregate, on or after September 19, 1994 and commencing on or before March 31, 1995, in Haiti or on board any ship actively engaged in patrolling the territorial waters of Haiti for that period, and received an Armed Forces Expeditionary Medal for such service;

[9.] 10. Served in the Republic of Bosnia and Herzegovina for a period of 14 days, continuously or in the aggregate, on or after November 20, 1995, in direct support of Operation Joint Endeavor or Operation Joint Guard, commencing on or before June 20, 1998, and:

- i. Was deployed in that nation or in another area in the region;
- ii. Was on board a United States naval vessel operating in the Adriatic Sea; or
- iii. Operated in airspace above the Republic of Bosnia and Herzegovina;

[10.] 11. Served in Operation Enduring Freedom in a theater of operation and in direct

support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after September 11, 2001 but commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

[11.] 12. Served in Operation Iraqi Freedom in Iraq or in another area in the region in direct support of that operation for a period, continuously or in the aggregate, of at least 14 days, on or after the date the President of the United States or the United States Secretary of Defense designates as the inception date of the operation, commencing on or before the date the President of the United States or the United States Secretary of Defense designates as the termination date of that operation;

[12.] 13. Received a service-incurred injury or disability during a period in (b)1 above or while serving in a mission during a period and within the corresponding geographical area, as specified in (b)2 through [11] 12 above, regardless of the length of service or, in the case of (b)[8]9 above, regardless of receipt of an Armed Forces Expeditionary Medal;

[13.] 14. Served in any army or navy of the United States allies in World War I between July 14, 1914 and November 11, 1918, or World War II between September 1, 1939 and September 2, 1945, provided he or she voluntarily enlisted in such service, was a United States citizen at the time of enlistment, did not renounce or lose United States citizenship, and was honorably discharged; or

[14.] 15. Is the surviving spouse of a person entitled to veterans preference and has not remarried.